IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.11.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.929 of 2003

J.V.Bhoopalan .. Petitioner/Tenant

vs.

1.Rajamanickammal
2.S.Srinivasan
3.S.Kumaresan .. Respondents/Landlords

Revision Petition filed against the order dated 26.2.2003, made in R.C.A.No.134/1994 on the file of the rent control appellate authority-cum-II Addl.Sub-Court, Coimbatore, confirming the order dated 18.8.1994 made in R.C.O.P.No.203/1990, on the file of the District Munsif-cum-rent control authority, Coimbatore.

For Petitioner : Mr.R.Karthick,
for M/s.T.S.Sivagnanam.

For Respondents : Mr.S.Parthasarathi,
Senior counsel,
for M/s.Sarvabhauman Associates.

ORDER:

This Revision Petition has been filed against the order dated 26.2.2003, made in R.C.A.No.134/1994 on the file of the rent control appellate authority-cum-II Addl.Sub Court, Coimbatore, confirming the order dated 18.8.1994 made in R.C.O.P.No.203/1990, on the file of the District Munsif-cum-rent control authority, Coimbatore.

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2. The tenant is the revision petitioner.

3. The original landlord D.Shanmugam filed RCOP No.203/1990 against the revision petitioner for an order of eviction on the ground that the revision petitioner has committed wilful default in the payment of rent. By order dated 18.8.1994 the rent controller allowed the RCOP by holding that the revision petitioner/tenant has committed wilful default in the payment of rent. Against the order

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of the rent controller, the tenant filed RCA No.134/1994 and the Rent Control appellate Authority by order dated 26.2.2003 dismissed the appeal and upheld the order of rent controller. Aggrieved by the order of the appellate authority confirming the order of rent controller, the above Civil Revision Petition has been filed under Sec.25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act').

4. During the pendency of the appeal, the original landlord passed away and respondents 1 to 3 herein were added as respondents 2 to 4 in RCA No.134/1994 on 12.11.2002.

5. Heard the learned counsel for the revision petitioner and the learned Senior Counsel for the respondents. I have also perused the documents filed and the judgments referred to in support of their submissions.

6. The case of the landlord before the rent controller is that the revision petitioner is a tenant paying a monthly rent of Rs.650/- and he has not paid the monthly rent on and from December 1988. Therefore he sent a notice dated 27.6.1990 calling upon the tenant to pay the rental arrears, for which a reply dated 12.7.1990 was sent by the revision petitioner/tenant informing that rent up to April 1990 was already deposited in court and he has also enclosed two pay orders for Rs.650/- each along with the reply. On verification it was found that the revision petitioner/tenant deposited a sum of Rs.1300/- on 15.3.1989, Rs.1800/- on 13.7.89 and on the very same date another sum of Rs.150/- and yet another sum of Rs.650/- were deposited by him. Further on 12.7.90 another sum of Rs.1300/- was deposited and all these amounts would represent the rental arrears for a period of 6 months, whereas a sum of Rs.11,050/- for a period of 17 months was due and payable by the revision petitioner/tenant when the notice dated 27.6.1990 was sent by the landlord. Therefore, the landlord prayed for an order of eviction on the ground of wilful default committed by the revision petitioner/tenant.

7. The revision petitioner/tenant opposed the eviction petition on the ground that he was forced to deposit the monthly rent in court as the landlord refused to receive the rent. Similarly he was forced to deposit 2 or 3 months rent in the court as there were shortage of chalans for which he could not be held responsible. The rent controller after going through the entire evidence held that the revision petitioner/tenant has failed to inform the landlord about the deposit of rent in the court and he has not explained with acceptable reason for depositing the rent into court. The rent controller has further observed that the revision petitioner/tenant has proved the allegation that the landlord has refused to receive the rent when it was paid to him.

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The rent controller after going through the register kept in the court for deposit of rent found that the rents were not properly deposited as and when it were due and the same was deposited with an interval of few months, that too at the convenience of the revision petitioner/tenant. Therefore the rent controller held that the revision petitioner/tenant has committed wilful default and passed an order of eviction.

8. The appellate authority after re-appreciating the evidence concurred with the findings of the rent controller in toto.

9. The appellate authority has further gone into the aspect of deposit of rent by the revision petitioner/tenant under Sec.8 of the Act, 1960 and held that the conditions precedent under Sec.8 of the Act before depositing the rent into court were not complied with by the tenant and the tenant has straight away deposited the rent into court. The appellate authority has also referred to the fact that the deposit of rent was made in RCOP No.264/1988 which was not filed under Sec.8(5) of the Act and RCOP No.264/1988 was filed for some other purpose.

10. The learned counsel for the revision petitioner/tenant contended that there is no wilful default committed by the tenant and having refused to receive the rent which is his statutory duty, the landlord cannot contend that the tenant has failed to follow the conditions spelt out in Sec.8 of the Act. Further the learned counsel submitted that failure to follow the steps enumerated in Sec.8 does not mean that the tenant has committed wilful default.

11. Learned counsel for the revision petitioner/tenant relied on the following judgments in support of his contentions:
1) 1989(1) L.W. 155 (Durgai Ammal v. R.T.Mani)
2) 1995(II)M.L.J. 211 (Rajalinga Chettiar v. Nataraja Mudaliar)
3) 2000(1) CTC 137 (Hamid Sultan, V.S. v. Abdul Latheef)
4) 2002(1) CTC 487 (J.J.Lal Pvt.Ltd. v. M.R.Murali)

12. Per contra the learned Senior Counsel for the respondents submitted that when the tenant initiates proceedings under Sec.8 of the Act the same should be in accordance with law. He further submitted that even otherwise the tenant is guilty of wilful default as he has not deposited the rent as and when it became due. He finally concluded his argument by submitting that when both the authorities below after going through the records including the register for deposit of rent kept in the court held that the rent was not properly deposited, the same need not be interfered with by this court under Sec.25 of the Act, in the absence of any illegality or infirmity.

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13. He relied on the following decisions in support of his submissions:

1) 2003(1) SCC 123(E.Palanisamy v. Palanisamy)
2) 2006(2) M.L.J. 711 (M.Gangabai Ammal v. M.Saraswathamma)
3) 2006(3) L.W. 304 (S.Pandian v. A.G.Velayudham)

14. The learned counsel for the revision petitioner submitted that when a landlord refuses to receive the rent sent by the tenant, it is his fault and therefore he cannot subsequently say that the tenant has not exercised his right under Sec.8 of the Act and therefore he must be taken to have committed wilful default. For this proposition he relied on the decisions of this court reported in 1989(1) L.W. 155 (cited supra), 1995(II) M.L.J. 211 (cited supra) and 2000(1) CTC 137 (cited supra).

15. In 1989(1) L.W. 155 (cited supra), a Division Bench of this court held as follows:

> "S.8 provides that in case the landlord refuses to receive rent tendered by the tenant the tenant can call upon the landlord to name a bank where she can deposit it and if he fails to do so the tenant can send it by money order and if even that money order is not received, the tenant can deposit the rent before the Rent Controller. But it is nowhere stated that if the tenant does not do so it will amount to wilful default. When a landlord refuses to receive the rent sent by the tenant it is his fault. He cannot subsequently say that the tenant has not exercised his right given under S.8, and, therefore, he must be taken to have committed wilful default. Similarly, if the tenant has not deposited the rent before the Rent Controller in case of bona fide doubt as to the person who is entitled to receive the rent and the person concerned does not help to remove the doubt of the tenant, the tenant cannot be said to have committed wilful default in payment of rent. Therefore we find that the finding of the Appellate Authority that the tenant committed wilful default in payment of rent is wrong and hence that finding has to be set aside."

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16. In 1995(II) M.L.J. 211 (cited supra), this court held as follows:

> "27. With respect, I agree with the view taken by Ramaprasada Rao, J., followed by the other learned Judges referred to supra, that Sec.8 is only an enabling provision to prove the bona fides of the tenant and absence of wilfulness on the part of the tenant in the matter of payments of the rents. I am also of the view that the non-adoption of the procedure prescribed under Sec.8(2) which could be adopted by the tenants in their discretion, does not throw any light upon want of bona fides of the tenants. In the instant case, I am also of the view that the procedure prescribed under Sec.8 of the Act is only optional and not mandatory. This apart, the same view was taken by the Division Bench, in Durgai Ammal v. R.T.Mani, (1989) 1 L.W.155, while reversing the decision of Ramanujam, J., in G.K.Jose v. Ramathal, (1979)1 M.L.J. 372. As already indicated,Ratnam, J., has distinguished the Division Bench judgments in Durgai Ammal v. R.T.Mani, (1989)1 L.W. 155, on the ground that Sec.8(5) of the Act had been passed due to refusal of the landlord in that case. In Minor Rajakumari represented by her next friend Mr.Ramakrishnan v. V.Natarajan, (1994)1 L.W. 340, Ratnam, J., himself has observed that it was open to the tenant to have followed the procedure laid down in the Act with reference to the deposit of rent, but instead, the tenant had opened an account and had been depositing the rents in that account so as to make it available to the landlord whenever required. However, the learned Judge said that though it may be that the tenant was not in order in not having resorted to the provisions of the Act with reference to the payment of rents, inasmuch as the evidence of the tenant that he had deposited the amounts in a Bank account, has not been repudiated or rejected as unacceptable, there could not be any wilful default as such in the payment of rents in that case, as contended by the landlord. In the instant case also, deposit of rents had been made in the Post Office Savings

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Bank Account in the name of the tenants by the tenants, without resorting to the provisions of the Act. With reference to the payment of rents the tenants had produced before the court below the evidence regarding the deposits. In fact, the landlord has withdrawn the amount after obtaining orders from the Rent Controller, of the deposits made by the tenant. Therefore, it follows that there could not be any wilful default as such in the payment of rents in the instant case as contended by the learned counsel for the landlord. Though a contrary view was taken by Nainar Sundaram, J., in Marudachala Udayar v. Dhandapani, (1980)1 M.L.J. 169, by Ratnam, J., in Kalyani v. G.V.Subramaniam, (1990)1 M.L.J. 29, by Thangamani, J., in N.Damodaran Naicker v. Janaki Ammal, (1995)1 M.L.J. 33, Ratnam, J., in Vasavambal v. Chenniappa Gounder, (1980)1 M.L.J. 207, by Sivasubramanian, J., in Muktha Bai v. Adinarayana Chetty, (1989)1 M.L.J. 502 and in Umrao Bai v. Dhanalakshmi Ammal, (1989)2 L.W. (S.N.)7 and by Padmini Jesudurai, J., in Selvaraj alias Subbarama Reddiar v. K.Mumtaz Begum, 100 L.W. 510. With respect I am unable to agree with the views expressed by them since I am bound by the decision of the Division Bench in Durgai Ammal v. R.T.Mani, (1989)1 L.W. 155.

28. Their Lordships of the Supreme Court in S.Sundaram Pillai v. V.R.Pattabiraman, A.I.R. 1985 S.C. 582: 98 L.W. 49, held as follows:

"Thus a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above."

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> In this case, the landlord was not in a position to prove that default in order to be wilful, as intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom.
> 29. Therefore, I am of the view that the courts below have erred in holding that the premises, the subject matter of the petitions, is bona fide required by the respondent-landlord for demolition and re-construction and that the petitioners-tenants had defaulted in payment of rents. As already seen, the courts below have failed to take into consideration the fact that rents were duly remitted in every month in the Post Office Savings Bank Account and that therefore, there cannot be any wilful default on the part of all the three tenants against whom different petitions were filed in an identical manner."

17. In 2000(1) CTC 137 (cited supra), this court held as follows:

> "13. The present case would be covered by the observation of the Division Bench in the judgment reported in Durga Ammal v. R.T.Mani, 1989(1)L.W. 155, and the landlord who refused to receive the rent cannot be heard to complain non compliance of Section 8 of the Act as against the tenant. It is undoubtedly, true that in considering whether a tenant was guilty of wilful or not, the circumstance of non compliance of Section 8 of the Act will also be one of the relevant circumstance, but not the only conclusive circumstance in a case where the landlord refused to receive the rent."

18. Citing the above decisions, the learned counsel for the revision petitioner/tenant assailed the order of the appellate authority.

19. But the learned Senior Counsel relied on the decision of the Supreme Court reported in 2003(1) SCC 123 (cited supra) and the decision of this court reported in 2006(3) L.W. 304 (cited supra) to contend that the tenant is bound to comply strictly with statutory provisions. Otherwise he cannot enjoy the benefits conferred by such provisions.

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20. In 2003(1) SCC 123 (cited supra), the Hon'ble Supreme court held as follows:

> "6. The counsel for the appellant did not dispute that the tenant had not fulfilled the conditions prescribed in Section 8 of the Act before making deposit of rent in court. Hence similar circumstances and while dealing with almost similar provisions contained in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, this Court in Kuldeep Singh v. Ganpat Lal (1996)1 SCC 243 held: (SCC p.249, para 8)
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> "8. In the present case, the appellant is seeking to avail of the benefit of the legal fiction under Section 19-A(4) of the Act. It is settled law that a legal fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field. (See Bengal Immunity Co. Ltd. v. State of Bihar (AIR 1955 SC 661 : (1955) 2 SCR 603 (SCR at p. 646). The appellant can avail of the benefit of Section 19-A(4) if the deposit of Rs.3600 made by him in the Court of Munsif (South), Udaipur, on29.10.1082, by way of rent for the months of May 1982 to October 1982, can be treated as a payment under Section 19-A(3)(c) so as to enable the appellant to say that he was not in default in payment of rent. Under Section 19-A(3)(c) the tenant can deposit the rent in the court only if the conditions laid down in the said provision are satisfied. It is the admitted case of the appellant that these conditions are not satisfied in the present case. The deposit which was made by the respondent in court on 29.10.1982 cannot, therefore, be regarded as a deposit made in accordance with clause (c) of sub-section (3) of Section 19-A and the appellant cannot avail of the protection of sub-section (4) of Section 19-A and he must be held to have committed default in payment of rent for the months of May 1982 to October 1982. This means that the decree for eviction has been rightly passed against the appellant on account of default in payment of rent for the period of six months.

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7. Again in M.Bhaskar v. Venkatarama Naidu (1996)6 SCC 228 with reference to similar provisions contained in the A.P.Buildings (Lease, Rent and Eviction) Control Act, 1960, this Court observed that when the landlord is evading payment of rent, the tenant has to follow the procedure prescribed under Section 8 of the Act i.e., to issue notice to the landlord to name the bank and if he does not name the bank, the tenant has to file application before the Rent Controller for permission to deposit rent. The tenant did not follow that procedure. Omission to avail of the prescribed procedure disentitles the tenant to plead that there was no wilful default on his part. The landlord was, therefore, entitled to seek eviction on the ground of wilful default in payment of rent on the part of the tenant.

8. Admittedly the tenant did not follow the procedure prescribed under Sec.8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e., sub-sections(2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. The impugned judgment of the High Court, therefore, does not call for interference. These appeals are dismissed. We are informed that the landlords have already taken possession of the suit premises, in pursuance of the High Court judgment."

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21. In 2006(3) L.W. 304 (cited supra), I have also had an occasion to deal with Sec.8 of the Act and taken a decision that the tenant should meticulously follow the procedure enumerated under Sec.8 of the Act.

22. Even though the decisions relied on by the learned counsel for the revision petitioner/tenant are supporting the contentions of the revision petitioner/tenant, I am not able to accept the same, in view of the categorical decision of the Hon'ble Supreme Court reported in 2003(1) SCC 123 (cited supra).

23. The learned counsel for the revision petitioner/tenant further submitted that even if there is a default, it is not a wilful default and for this proposition he relied on the decision of the Supreme court reported in 2002(1) CTC 487 (cited supra).

24. I am unable to accept this submission also.

25. Both the authorities below, after going through the entire records including the court register came to a conclusion that first of all it was not proved by the tenant that the rent was refused by the landlord and even while depositing the rent, the same was not deposited as and when it became due.

26. In such circumstances, as rightly submitted by the learned Senior Counsel for the respondents that this court under Sec.25 of the Act cannot re-appreciate the evidence to arrive at a different conclusion and I have also taken a similar view in 2006(2) M.L.J. 711 (cited supra).

27. In the result, I do not find any merits in the above C.R.P., warranting interference by this court and therefore the same is dismissed. No costs. C.M.P.No.9615/2003 is also dismissed.

sks

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Asst.Registrar

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TO

1. The II Additional Sub Court
cum Rent Control Appellate Authority,
Coimbatore.

2. The Prl District Munsif cum Rent Control Authority,
Coimbatore.

3. The Record Keeper, VR Section, High Court, Madras.

+ 1 cc to Mr. T. S. Sivagnanam, Advocate SR No. 52370

RA(CO)
SR/7.12.2006 order,
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